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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM [redacted] 1970

No. [redacted] 246

ALBERT B. MUIR, III,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

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INDEX

Opinions Below 2
Jurisdiction 2
Questions Presented 2
Constitutional Provisions Involved 3
Statement of the Case 3
How Federal Questions Are Presented 5
Reasons Relied On for the Allowance of the Writ 6
Conclusion 8
Appendix A—Trial Court Orders A1
Appendix B—Opinion and Order Below A3
Appendix C—Excerpts from the Record Below A14

Citations

CASES

Bloom v. *State of Illinois*, 391 U.S. 194 ..... 3, 7
Malloy v. *Hogan*, 378 U.S. 1 7
Miranda v. *State of Arizona*, 384 U.S. 436 ..... 6, 7, 8

OTHER AUTHORITIES

United States Constitution, Amendment V 3
United States Constitution, Amendment VI 3
United States Constitution, Amendment XIV, § 1 3

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PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Petitioner, ALBERT B. MUIR, III, respectfully prays that a writ of certiorari issue to review the opinion and judgment of the District Court of Appeal of Florida, First District.[1]

1. The opinion and judgment of the District Court of Appeal in this case was "rendered by the highest court of a State in which a decision could be had," as required by 28 U.S.C., § 1257. e.g. see *Nash* v. *Florida Industrial Commission*, 389 U.S. 235; *Fort* v. *City of Miami*, 389 U.S. 918; *Waller* v. *State of Florida*, U.S. ....., No. 24, this Term, decided April 6, 1970; and *Dickey* v. *State of Florida*, ... U.S. ....., No. 728, this Term, decided May 25, 1970.

OPINIONS BELOW

The judgment of conviction and commitment order of the Circuit Court of Duval County, Florida (R 124) printed in Appendix A hereto, *infra*, p. A1, is not officially reported. The opinion and judgment of the District Court of Appeal of Florida, First District (R 171-179) printed in Appendix A hereto, *infra*, pp. A3-A13, is reported in 232 So.2d 225.

JURISDICTION

The judgment of the District Court of Appeal of Florida, First District, was entered on February 24, 1970 (R 171-179). A timely petition for rehearing was denied on March 19, 1970 (R 180). The jurisdiction of this Court is invoked under 28 U.S.C., § 1257(3) because a claim of constitutionally protected right, is involved.

QUESTIONS PRESENTED

The trial court judge entered an "Order for Citation" which provided for the issuance of a criminal contempt citation and required petitioner to personally appear before that judge and show cause why he should not be adjudged in contempt of court for his false statements. Petitioner was compelled to be a witness against himself, by the judge, without ever informing him of his privilege against self-incrimination. Petitioner was then summarily tried and convicted of the offense of direct criminal contempt. Florida law provides no maximum punishment for criminal contempt. The questions thereby arising are:

1. Is the Fifth Amendment privilege against self-incrimination applicable to criminal contempt proceedings?

2. Is the Fifth Amendment privilege against self-incrimination violated in a criminal contempt proceeding

by the failure to warn the accused with respect to his right to remain silent?

3. In a criminal contempt proceeding conducted by the trial court judge, must the accused first be informed of his right to remain silent prior to interrogation where presence of accused is obtained by the court's warrant?

4. Where perjury is charged as the basis for a criminal contempt and the state law provides no maximum punishment, if found guilty, is the offense charged a serious crime under the rule of *Bloom v. State of Illinois*, 391 U.S. 194, requiring a jury trial?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment V:

> "No person shall . . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . . ."

Constitution of the United States, Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ."

Constitution of the United States, Amendment XIV, § 1:

> ". . . nor shall any state deprive any person of life, liberty, or property without due process of law. . . ."

STATEMENT OF THE CASE

Petitioner is a career enlisted Petty Officer in the United States Navy. While stationed in the Jacksonville, Florida, area he obtained a final judgment of divorce on the statutory ground of desertion. This case has its origin in a criminal contempt citation issued by the trial court

judge who, 72 days previous, had granted the divorce. On November 27, 1968, pursuant to an "Order for Citation", petitioner was cited to appear before the trial court judge, as follows:

> "You are hereby notified that, based on information presented to Judge Lamar Winegeart, Jr., Circuit Judge of the Circuit Court in and for Duval County, Florida, that you the said Albert B. Muir, III, have apparently filed a sworn affidavit containing false allegations and have given sworn false testimony in obtaining your final judgment of divorce from Mary Carol Muir, which said final judgment was entered herein on the 19th day of September, 1968.
>
> "THIS IS THEREFORE TO COMMAND YOU to answer said charges by personally appearing before the Honorable Lamar Winegeart, Jr., on Wednesday, December 4, 1968 at 11:15 A.M. in Room 202, Duval County Courthouse at Jacksonville, Florida and to show cause by said date why you should not be held in contempt of Court * * *" (R 32).

On December 4, 1968, as commanded by the court's warrant, petitioner appeared before the trial court judge, in his chambers. He was immediately sworn as a witness against himself (R 37) and, after the following colloquy, was interrogated by the trial court judge:

> "THE COURT: Mr. Culpepper, have you informed your client of the State of Florida regarding perjury?
>
> "MR. CULPEPPER: Yes, sir.
>
> "THE COURT: Have you informed him this is a crime punishable by twenty years in Florida's State Prison, Raiford?
>
> "MR. CULPEPPER: Yes, sir, we're aware of that." (R 37).

The record reveals that petitioner never was informed as to his right to remain silent and therefore never asserted his right to remain silent or otherwise refused to testify about the subject matter under investigation. His constitutionally protected right was completely ignored by the judge in the interrogation.

At the conclusion of that hearing the trial court judge continued the case until 2:00 o'clock P.M. on Friday, January 10, 1969, at which time petitioner was again ordered to be before the court (R 59) and was further compelled, without warning, to be a witness against himself (R 60-121).

At the conclusion of that hearing the trial court judge stated:

> "The testimony given at the hearing on the divorce and the testimony given in prior hearing of the contempt citation as a whole, after listening to the answers the Court does hereby find you to be in willful contempt.
>
> * * * *
>
> "Mr. Muir, I do hereby order and confine you to the Duval County Jail for a period of sixty days from the date herein." (R 121).

How Federal Questions Are Presented

The federal questions sought to be reviewed here were specifically raised in the court of first instance (the Circuit Court of Duval County, Florida) on January 20, 1969 by petitioner's timely motion[2] to vacate the contempt

2. Inasmuch as the trial court conducted its interrogation within the framework of the original civil action, the motion was filed within the ten (10) day period permitted by the Rules of Civil Procedure, rather than the Rules of Criminal Procedure, which would have provided for the filing of such a motion without

judgment or for a rehearing or a new trial (R 126-128). ¶ 7 of the motion (R 126) specifically raised the constitutionally protected rights and is printed in Appendix C hereto, *infra*, p. A14. The trial court judge conducted two hearings on the motion and denied it on March 11, 1969 (R 160). The order is printed in Appendix A hereto, *infra*, p. A2. Notice of appeal (R 161-162) was timely filed and all federal questions preserved by appropriate assignments of error (R 163-165). They are printed in Appendix C hereto, *infra*, p. A15. The federal questions were specifically recognized (R 172), and passed upon (R 177-179) by the court below in its opinion and the claim of infringement rejected. The pertinent portions of the opinion are also extracted and printed in Appendix C hereto, *infra*, pp. A14-A15.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The court below has decided a federal question of substance not theretofore determined by this court. In affirming the judgment of contempt and rejecting petitioner's point on appeal that he was compelled to be a witness against himself in a criminal case, the court below has held that the Fifth Amendment privilege against self-incrimination is inapplicable to a criminal contempt proceeding and that an accused in a criminal contempt proceeding need not be first informed of his constitutionally protected right to remain silent before being interrogated by the judge upon whose court the criminal contempt was committed. Neither *Miranda v. State of Arizona*, 384 U.S.

---

time limitation. This also accounts for the petitioner designating the State of Florida as the respondent in this proceeding, rather than as actually appeared of record below. Under either set of rules, the motion was timely filed and properly raised the constitutional issues in both the court of first instance and the appellate court.

436, nor any of its progeny discuss either a direct or indirect criminal contempt case involving interrogation by the court itself of an accused who has been commanded to appear to show cause why he should not be adjudged in criminal contempt and punished accordingly. The opinion below clearly approves an "in court" interrogation without a cautionary warning to protect the right to remain silent. The evidence thus obtained formed the basis for petitioner's conviction (R 124). It is respectfully urged that this is a substantial federal question which should be determined by this court. Fifth and Fourteenth Amendment rights have clearly been denied in these circumstances. The rule of *Miranda* should be expressly extended to such criminal contempt cases.

2. The court below has decided a federal question of substance in a way probably not in accord with applicable decisions of this court. *Bloom* v. *State of Illinois*, 391 U.S. 194, decided May 20, 1968, clearly holds that the Sixth Amendment guarantees the right to a jury trial in state court prosecutions for contempt just as it does for other crimes. However, the court below, in its opinion, expressly held otherwise, as follows:

> "Direct criminal contempt proceedings, terminating in a penal sentence, may be conducted by a judge without a jury without violating the constitutional right to a trial by jury."

In petitioner's view, the courts below have denied him rights to which both *Malloy* v. *Hogan*, 378 U.S. 1 (the invasion of his right to remain silent) and *Bloom* v. *State of Illinois, supra* (his right to jury trial) indicate he is entitled. Additionally, and equally important, an independent examination of the record clearly reveals the abuse in the exercise of the summary power by the trial court judge. As an example of this abuse, the attention of

the Court is directed to the record where the trial court judge states:

> "* * * And you are looking twenty years in prison in the face and you had better not forget it. That is for perjury if the Court sets aside the final decree and you got a little thing of bigamy." (R 55).

The Florida courts continue indirectly to avoid the admonitions of *Miranda* by narrowly defining custodial interrogation.[3]

Consequently, under the reported opinion of the Florida court, trials for criminal contempt may be conducted in this state without a jury.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted and the writ allowed.

Respectfully submitted,

JOSEPH M. GLICKSTEIN, JR.
1205 Universal-Marion Building
Jacksonville, Florida 32202
Counsel for Petitioner

---

3. Note, *Gideon, Escobedo, Miranda*: Begrudging Acceptance of the United States Supreme Court's Mandates in Florida, 21 U.Fla. L.Rev. 346, 354 (1969).

APPENDIX

APPENDIX A

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.
DIVISION "J"

No. 68-3807

ALBERT B. MUIR, III,
Plaintiff,

vs.

MARY CAROL MUIR,
Defendant.

Order

After due notice to all parties, hearing was held this date on the citation for contempt heretofore issued by this Court; all parties being present and being represented by their respective counsel, the Court does hereby find that the testimony given before the Court at the final hearing for divorce on September 18, 1968 together with the testimony given before the Court on December 4, 1968 and testimony heard this date by the Court, taken as a whole, the Court finds that said testimony constitutes the Plaintiff, Albert B. Muir, III, to be in willful, open and direct contempt of this Court. Upon consideration, it is therefore

ORDERED that the Plaintiff, Albert B. Muir, III, shall be taken into custody by the sheriff of Duval County, Florida, and placed in the Duval County jail and there to be kept for 60 days for such willful, open and direct contempt.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 10th day of January, A. D 1969.

/s/ Lamar Winegeart, Jr.
Circuit Judge

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.
DIVISION "J"

No. 68-3807

ALBERT B. MUIR, III,
Plaintiff,

vs.

MARY CAROL MUIR,
Defendant.

Order

THIS CAUSE coming on to be heard on motion of Plaintiff for an Order vacating, annulling and setting aside the Order dated January 10, 1969 and its judgment dated January 17, 1969, and for rehearing or retrial thereof; the Court having conducted two hearings on said motion and being fully advised in the premises, it is hereby

ORDERED:

1. That said motion to vacate the aforestated Orders and Final Judgment is and the same be denied.

It is further noted specifically that the basis upon which said motion is denied is predicated on the holdings in *Batteiger* v. *Batteiger*, 109 So2d 602 (3DCA 1959) and *Chavez-Rey* v. *Chavez-Rey*, 215 So2d 596 (3DCA 1968).

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 11th day of March, A. D 1969.

/s/ Lamar Winegeart, Jr.
Circuit Judge

APPENDIX B

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JANUARY TERM, A. D. 1970

Case No. L-365

ALBERT B. MUIR, III,
Appellant,

vs.

MARY CAROL MUIR,
Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED.

Opinion filed February 24, 1970.

An Appeal from the Circuit Court for Duval County Lamar Winegeart, Jr., Judge.

Glickstein, Crenshaw, Glickstein, Hulsey & Fay, of Jacksonville; for Appellant.

Earl Faircloth, Attorney General, and James R. Yon, Assistant Attorney General; for Appellee.

RAWLS, J.

Appellant, Albert B. Muir, III, appeals from a post judgment order of the Circuit Court of Duval County, which adjudged him in contempt of that court and sentenced him to imprisonment for a period of sixty days.

Three points are posed by appellant on this appeal, viz.: 1. The sufficiency of the evidence to support a conviction for (criminal) direct contempt. 2. The judge failed to comply with Part XVI, Florida Rules of Criminal Pro-

cedure. 3. The post judgment proceedings, conviction and the order of commitment of sixty days in the Duval County Jail for direct contempt contravene plaintiff's constitutional rights under the Fifth, Sixth, and § 1 of the Fourteenth Amendments to the Constitution of the United States, and §§ 2, 9 and 16, Declaration of Rights, § 3 of Article II, and § 3 of Article V, Constitution of Florida of 1968.

Applicable facts are: On May 13, 1968, Albert Muir filed a complaint for divorce to which was attached an affidavit for constructive service executed by him on May 10, 1968. Said affidavit stated: ". . . that he has made diligent search and inquiry (the details of which will be testified to at the final hearing) to discover the name and residence of the Defendant in the above entitled cause, *MARY CAROL MUIR*, . . . and the residence of the Defendant is: UNKNOWN TO THE PLAINTIFF."

Testimony was taken before the trial judge on September 18, 1968, at which time Muir testified that he had resided in Clay County, Florida, for twenty-eight months, was a registered voter in said county, and a member of the United States Navy; he married the defendant in February 1958; during the duration of their marriage, his wife had left him a number of times; one child was born of the marriage which defendant contended was not his. At this hearing the following questions and answers were given:

"THE COURT: What did you do to try and locate her?

"THE WITNESS: I asked around.

"THE COURT: Where?

"THE WITNESS: Here in Florida.

"THE COURT: Her family lives in New Jersey, you were married in New Jersey, did you contact her mother?

"THE WITNESS: Several times.
"THE COURT: Did you hear from her?
"THE WITNESS: Yes, sir.
"THE COURT: Was she there?
"THE WITNESS: No, sir.
"THE COURT: Did the mother say whether she knew or didn't know where she was?
"THE WITNESS: We didn't get along very well.
"THE COURT: She did answer your letters.
"THE WITNESS: Yes, sir.
"THE COURT: Have you ever placed a person to person call for her at her mother's home?
"THE WITNESS: No, sir.
"THE COURT: Did her mother tell you where she was?
"THE WITNESS: She didn't give me any indication she was there.
"THE COURT: Did she tell you she wasn't there?
"THE WITNESS: No, sir, she just didn't tell me anything.
"THE COURT: Where else did you look for her?
"THE WITNESS: I have asked around friends I thought possibly some of her friends could have known where she was . . .

* * *

"THE COURT: Why did she leave in April?
"THE WITNESS: . . . The last time I took her back after she had been gone for a period of 14 months. I loved her and wanted to make a go of it. She was in New Jersey.
"THE COURT: With her mother?
"THE WITNESS: No, sir, in Margate in a motel. They were not at her mother's."

Upon the foregoing testimony, the Court concluded it had jurisdiction, and upon the testimony adduced at the

hearing entered a final judgment of divorce on the next day, granting to defendant the custody of the child, and reciting: ". . . and as this Court knows not of the whereabouts of the child nor the Defendant there is no award of alimony nor support monies to either."

Subsequent to the entering of the final judgment of divorce, the Court received a letter dated November 25, 1968, from the defendant-wife's New Jersey attorney suggesting that further judicial proceedings be had, and stating: "In my 35 years of practice I never saw a case where perjury was more patent than in this case." Attached to the letter were two affidavits; one executed by defendant-wife, and the other by her father. The wife's affidavit recited facts denying certain incidents testified to by the plaintiff in the divorce proceedings. She further stated that her husband had not communicated with her since their last separation, but had communicated with her mother, and ". . . he had at all times known that I was residing with my mother and father in Atlantic City, New Jersey." The affidavit of the defendant's father reflected that prior to the final separation plaintiff telephoned him and his wife on numerous occasions and demanded that ". . . we take our daughter and their son, Albert B. Muir, IV, to our home in Atlantic City, New Jersey." The affidavit further reflected: "Albert B. Muir, III, at all times has known of the whereabouts of my daughter . . ." This affiant did not testify in the post judgment proceedings.

On November 27, 1968, a citation was issued by the trial judge to plaintiff, charging: ". . . that you, the said Albert B. Muir, III, have apparently filed a sworn affidavit containing false allegations and have given sworn false testimony in obtaining your final judgment of divorce . . ." and commanding him to appear before the Court on December 4, 1968, to show cause why he should not be held

in contempt and why the final judgment of divorce should not be vacated.

Plaintiff and his attorney appeared before the Court on December 4, 1968, at which time the Court interrogated plaintiff at length. Upon the conclusion of this hearing, the Court made the following statements:

> "We're not going on who has grounds for divorce, now. Only whether or not he sustained grounds for desertion and *whether or not he lied* to this Court. At least, he played cute with it from the evidence.
>
> * * *
>
> "Here's what I'm going to do. I'm going to continue this hearing until in January. I'm going to order you to deposit . . . [$75.00] in Domestic Relations in this Court to be forwarded to your ex-wife in Atlantic City, New Jersey to pay for her coming down here for further hearing in this matter. And you are looking twenty years in prison in the face and you had better not forget it. That is for perjury if the Court sets aside the final decree and you got a little thing of bigamy."

The hearing was resumed on January 10, 1969, at which time the defendant-wife made a special appearance. She testified that on April 12, 1967, Muir assisted her father in loading her things into her father's car; at this time he signed an agreement to pay $70.00 per month child support: she returned to New Jersey with her father and continuously resided with her parents at their home since separating from her husband; and all communications from her husband had been made through her mother. Although the wife in her affidavit had sworn that Muir lied about several matters in his testimony at the final hearing, such as: she had left him in 1959; she had left him in the summer of 1961 and was gone for fourteen months; and other

statements, the Court denied cross-examination upon this subject matter. The wife's New Jersey attorney, who had advised the Court that he had never before seen such a patent case of perjury, testified in substance that he had communicated with Navy officials and state officials in trying to procure support money for the child, and that he had no direct contact with Plaintiff Muir.

Muir testified that on the occasion of their separation, his wife told him she was leaving; her father came and took some of her belongings; he (Muir) was not there when they left; he communicated with his wife's mother, but never with his wife. Muir was asked by his attorney if he had any previous knowledge about his wife's whereabouts, and his answer was: "There is a reason for this." When asked, "Why?", Muir stated: "Because in March 1967 she had taken off for a period of two—a few days." Upon sustaining an objection, the Court stated: "We are restricting the testimony as to what to do after April 12, 1967, which is the date alleged in the complaint for desertion and the date we're offering for service of process." Muir again testified that he did not know his wife was living with her parents and had listed her address as "Unknown" on his income tax return. At the close of this proceeding, the Court entered its order holding plaintiff in direct contempt and sentencing him to sixty days in jail.[1]

Plaintiff moved for a rehearing or a new trial, which motion was heard on March 11, 1969. Material excerpts of argument by counsel and statements by the Court at that proceeding are:

(Plaintiff's counsel)

"In connection with the elements of diligent search and inquiry resulting in the supporting service and based

1. Supersedeas was granted on motion the following day.

on that, you determined you had jurisdiction and granted a judgment of divorce.

"There is nothing in any subsequent testimony by Mr. Muir that contradicts either his affidavit or his testimony at the final hearing in September of '68.

(The Court)

"The Court will concede there was no admission by him.

* * *

"I have agreed with you technically, he has made no false statements.

* * *

(Defendant's counsel)

". . . I think the man's answers were crafty and were suspicious and further indicated he was understanding and he gave answers that he chose which he felt the Court would approve and that is the way he answered any particular question that came to him.

"He gave this appearance and clearly would leave one to believe by the whole testimony given at the final hearing and certainly at the three that he made an inquiry and he had tried to locate his wife.

"He indicated he talked to her folks trying to determine where she was located. Throughout, he indicated he did not have any knowledge as to where she was either before or after by reason of the fact he had, in fact, been trying to keep up with her.

* * *

(The Court)

"The Court, in the Court's opinion, gave the man ample opportunity to purge himself of that contempt and failing to do that, therefore, your motion is denied."

Plaintiff's motion for an order setting aside the order entered January 10, 1969, and for rehearing, was denied.

Direct criminal contempt proceedings, terminating in a penal sentence, may be conducted by a judge without a jury, without violating the constitutional right to a trial by jury.[2]

In this nation of free people it is the rightful concept of our citizens that one shall not be imprisoned in jail until and unless a jury of his peers has found him guilty. This concept of criminal justice must be weighed on the scales of justice against the concept of the inherent right of the judiciary to vindicate the court's authority and maintain its dignity. The cases are legend which hold that the power to punish for contempt should be cautiously and sparingly exercised.[3]

In South Dade Farms, Inc. v. Peters[4] Mr. Justice Thornal quoted from pages 17 and 18 of Oswald, *Contempt of Court,* as follows:

> "'It should always be borne in mind in considering and dealing with contempt of Court that it is an offense purely *sui generis,* and that its punishment involves in most cases an exceptional interference with the liberty of the subject, and that, too, a method or process which would in no other case be permissible, or even tolerated. It is highly necessary, therefore, in all questions of this nature where the functions of the Court have to be exercised in a summary manner, that the Judge in dealing with the alleged offense should not proceed otherwise than with great caution and deliberation, and only in cases where the admin-

2. Gompers v. United States, 233 U.S. 604, 59 L.Ed. 1115, 34 S.Ct. 693.

3. Geary v. State, 139 So.2d 891 (Fla. App.3d 1962), and citations therein.

4. South Dade Farms v. Peters, 88 So.2d 891, 898 (Fla. 1956).

> istration of justice would be hampered by the delay in proceeding in the ordinary course of law; and that when any antecedent process has to be put in motion, every prescribed step and rule, however technical, should be carefully taken, observed, and insisted upon. The jurisdiction should be exercised the more carefully in view of the fact that the defendant is usually reduced, or pretends to be reduced, to such a state of humility, in fear of more severe consequences if he shows any recalcitrancy, that he is either unable or unwilling to defend himself as he otherwise might have done.' (Emphasis ours.)"

Mr. Justice Terrell, in his dissent in Neering v. State,[5] set forth guidelines which are most helpful in cases such as the instant one when he stated:

> "The imposition of a judgment for contempt is one of the most delicate duties a court is called on to perform. It is not fixed by statute but is controlled by mercy and discretion and the facts of the case. It should be corrective, not punitive, and it should be made clear that it is not imposed for committing a crime but for interfering with the essential and orderly processes of the law."

Ordinarily a contemner is entitled to a jury trial if the facts are substantially disputed.[6] The record in the instant case reflects considerable dispute as to the facts, and a complete absence of competent testimony to sustain the New Jersey lawyer's observation at the outset that "patent perjury" was indulged in by plaintiff.

The primary question posed by this record goes to the sufficiency of the evidence to sustain the conviction of contempt of court. The overall import of the proceedings reflect a lack of candor and good faith on the part of Muir

5. Neering v. State, 155 So.2d 874, 879 (Fla. 1963)
6. State ex rel. Luban v. Coleman, 189 So. 713 (Fla. 1939).

with the Court. By his affidavit he swore that he had made diligent search and inquiry, but his affidavit plainly stated that he would testify as to the details of the diligent search and inquiry at the final hearing. His testimony as a whole reveals without question that he did not pursue such diligent inquiry as is requisite to establish jurisdiction of the Court through the means of a constructive service of process. However, he did not swear falsely. The trial court must shoulder some of the responsibility, for even though plaintiff failed to respond to critical questions, the Court concluded it had jurisdiction and proceeded to the merits of the cause. In the absence of false swearing by Plaintiff Muir in Court, can it be said that he demonstrated that degree of contemptuous attitude as to require imprisonment to vindicate the Court's authority and maintain its dignity? In view of the Court's observation during the contempt proceedings: "I have agreed with you technically, he [plaintiff] has made no false statements", we conclude that Muir's conduct was not of such character. However, the evidence does amply support a technical contempt.

The judgment of contempt is affirmed. The sentence of imprisonment is set aside with directions to discharge the defendant.[7]

Affirmed in part, reversed in part.

JOHNSON, Chief Judge, and CARROLL, DONALD K., J., CONCUR.

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7. See Neering v. State, 141 So.2d 615 (Fla. App. 1st 1962); certiorari discharged 155 So.2d 874 (Fla. 1963).

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JANUARY TERM, A. D. 1970

Case No. L-365

ALBERT B. MUIR, III,
Appellant;

vs.

MARY CAROL MUIR,
Appellee.

Order

Petition for rehearing and reply to petition for rehearing having been considered,

IT IS ORDERED that the petition is denied.

WITNESS the Honorable Dewey M. Johnson, Chief Judge, and Seal of the Court this 19th day of March, A. D. 1970.

Raymond E. Rhodes
Clerk

A True Copy
ATTEST:
Raymond E. Rhodes
Clerk, First District Court of Appeal
Tallahassee, Florida

APPENDIX C

Excerpts From Record
(Captions and formal parts omitted)

* * *

Rule 1.530 Motion

* * *

7. The entry of said judgment is contrary to the Fifth, Sixth, Eighth and § 1 of the Fourteenth Amendments to the Constitution of the United States, and §§ 2, 9, 17 and 22, Declaration of Rights, § 3 of Article II and § 3 of Article V, Constitution of Florida of 1968; (R 126).

* * *

Three points are posed by appellant on this appeal, viz.: 1. The sufficiency of the evidence to support a conviction for (criminal) direct contempt. 2. The judge failed to comply with Part XVI, Florida Rules of Criminal Procedure. 3. The post judgment proceedings, conviction, and the order of commitment of sixty days in the Duval County Jail for direct contempt contravene plaintiff's constitutional rights under the Fifth, Sixth, and § 1 of the Fourteenth Amendments to the Constitution of the United States, and §§ 2, 9 and 16, Declaration of Rights, § 3 of Article II and § 3 of Article V, Constitution of Florida of 1968. (R 171-172).

* * *

Direct criminal contempt proceedings, terminating in a penal sentence, may be conducted by a judge without a jury, without violating the constitutional right to a trial by jury.

In this nation of free people it is the rightful concept of our citizens that one shall not be imprisoned in jail

until and unless a jury of his peers has found him guilty. * * * (R 177).

* * *

Ordinarily a contemner is entitled to a jury trial if the facts are substantially disputed. The record in the instant case reflects considerable dispute as to the facts, and a complete absence of competent testimony to sustain the New Jersey lawyer's observation at the outset that "patent perjury" was indulged in by plaintiff. (R 178-179).

* * *

The judgment of contempt is affirmed. * * * (R 179)

* * *

Assignments of Error

* * *

4. The court erred in conducting the proceedings on December 4, 1968.

5. The court erred in conducting the proceedings on January 10, 1969.

6. The court erred in entering the Order dated January 10, 1969.

7. The court erred in entering its order dated March 11, 1969, denying plaintiff's Rule 1.530 Motion. (R 163-164).